

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 04-00185 SOM
)	
Plaintiff,)	
)	ORDER OF RECUSAL
vs.)	
)	
JOSE DELA CRUZ, et al.,)	
)	
Defendants.)	
_____)	

ORDER OF RECUSAL

I hereby recuse myself from this case. This recusal arises from information about a party to this case that came to my attention before I realized that, given the circumstances of the disclosure, I could not share the information with the parties. I have previously informed Assistant United States Attorney Ken Sorenson and Defense Counsel Alan Baum and Pamela Tamashiro that I have information that I have not disclosed to them, and I have researched whether I have some recourse other than recusal or whether the information may indeed be disclosed to the parties. I stress that the information was not requested or sought out by me in any way. The information has no relevance to or bearing on co-defendants, who have already been sentenced. Having determined that I remain unable to share the information, I hereby recuse myself pursuant to 28 U.S.C. § 455, to avoid any concern by the parties that any ruling I make will be influenced by information that they do not have and therefore can neither

support nor refute, to avoid any question about my impartiality, and to avoid an appearance of impropriety.

The United States Probation Office has reviewed the information referred to above. I direct the Probation Office not to share the information with any party in this case, with counsel of record, or with the judge to whom this case is reassigned, unless that new judge specifically directs otherwise. Absent direct instruction by the new judge, the Probation Office shall not refer to the content of that information in any communication with the new judge and shall not permit the information to influence any recommendation the Probation Office makes to the new judge. The Probation Office had already prepared its sentencing recommendation in this case before learning of the information, and I am not aware of any reason that an amended recommendation is appropriate.

It appears to me that, if the judge to whom this case is reassigned learns the information referred to in the preceding paragraph, the new judge is likely to be as restricted in sharing the information with counsel as I am. It appears to me that, if the new judge does indeed learn the information, the new judge is likely to be required to recuse herself or himself, just as I have done. In the interest of avoiding repeated recusals in this case, I direct that the Clerk of Court place the documentation of the information (including any memorandum prepared by the

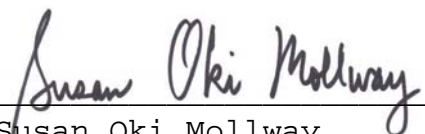
Probation Office regarding the information) in a sealed envelope bearing the notation in large bold letters on its cover:

"SEALED DOCUMENT (REFERRED TO IN ORDER OF RECUSAL). THIS MATERIAL MAY NOT BE VIEWED BY ANYONE, INCLUDING, COUNSEL, WITHOUT THE COURT'S PERMISSION. THE RECUSING JUDGE IS OF THE OPINION THAT THE SENTENCING JUDGE SHOULD NOT SEE THIS MATERIAL." A copy of the present order should also be attached to the envelope.

This case is referred for reassignment.

DATED: Honolulu, Hawaii; October 12, 2006.





Susan Oki Mollway
United States District Judge

United States of America v. Jose Dela Cruz; Cr. No. 04-00185 SOM;
Order of Recusal